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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,334	06/20/2003	Steven S. Diamond	05127-000229	6990

22910 7590 03/29/2006

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EXAMINER	
HANEY, RICHALE LEE	
ART UNIT	**PAPER NUMBER**
3765	

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/601,334	DIAMOND ET AL.	
	Examiner	Art Unit	
	Richale L. Haney	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 December 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-49* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☒ Claim(s) *1-49* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *22 December 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Response to Amendment

The amendment of 12/22/2005 has been received. Claims 9, 27 and 35 have been amended. Claims 1 – 49 are pending in the application.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1 - 5, 8, 10, 11,13 - 21, 24, 26, 28, 30 - 32, 34, 36, 38 - 41, 44 - 45, 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park (6,016,572) in view of Smith (5,033,122). The device of Park teaches headwear having a visor and a crown portion (Figure 1). The crown portion is comprised of a plurality of gores formed from a stretchable bias cut fabric (Figure 2 and Column 3, lines 30 - 33), a unitarily formed stretchable inner headband also cut on the bias (Column 3, lines 33 - 34), folded about itself, covering an filler piece of elastic material, (Figure 8, 6, 7) and secured to the lower edge of the crown with two rows of stitching evenly dispersed from the center and edges and parallel to the lower peripheral edge (Figure 8, 7, 15). The device of Park shows a elastic material binding strip covering the seams, secured to the seams with stitching allowing movement in the seams (Figure 2 - 1, 4; Figure 3, 5) where the stitching extends substantially parallel to and proximate each of the opposed longitudinal edges of the binding (Figure 4, 5), and stitching extending substantially

parallel and proximate to the folded edges of the fabric making the seam (Figure 3, 2, 5). The device of Park lacks a separate fabric piece folded to form the sweatband wherein the edges meet creating a seam. The device of Smith teaches an inner piece sweatband where the longitudinal edges are folded to meet with each other forming a seam (Column 4, lines 13 -14) and are covered with a binder strip (Figure 3, 24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Park, by using the flexible binding disclosed to cover the folded edges, that form a seam, of the sweatband as taught by Smith, in order to achieve the same flexibility attained in the gore seams in the sweatband seam. It is noted by the examiner that elastane is not specifically disclosed by Park; however it is well know to one of ordinary skill in the art that stretch is commonly achieved by incorporating elastic or spandex into yarn structure. Moreover it is also noted that the stitching, taught by Park, parallel with the edges of the crown would become parallel with the folded edges of the sweatband and binding, taught by Smith, when the sweatband of Park is replaced with the sweatband of Smith.

3. Claims 6, 22, 42 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park and Smith as applied to as applied to claims 1 - 5, 8, 10, 11,13 - 21, 24, 26, 28, 30 - 32, 34, 36, 38 - 41, 44 - 45, 47 and 48 above, and further in view of Shin (US 6,477,715). The modified device of Park shows all of the claimed invention except for the binding being secured to the inner piece with adhesive. The device of Shin discloses a binding tape secured to an inner headband with adhesive (Figure 6, 10 and Column 3, lines 10 -12). It would have been obvious to one of ordinal skill in the ad

at the time the invention was made to further modify the device of Park, by incorporating adhesive as a means for securing, as taught by Shin in order to achieve an inexpensive method of manufacture.

4. Claims 7, 23, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park and Smith as applied to claims 1 - 5, 8, 10, 11,13 - 21, 24, 26, 28, 30 - 32, 34, 36, 38 - 41, 44 - 45, 47 and 48 above, and further in view of Piche (US 5,317,761). The modified device of Park shows all of the claimed invention except for the inner sweatband attached to a crown by means of adhesive. The device of Piche teaches a sweatband secured to the inner portion of a crown by means of adhesive (Column 3, lines 22 - 29). It would have been obvious to one of ordinary skill in the ad at the time the invention was made to further modify the device of Park by attaching the inner sweatband by adhesive as taught by Piche in order to provide a removable attachment to prevent the headwear from becoming soiled (Column 1, lines 67 - 68).

5. Claims 25, 33 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park and Smith as applied to claims 1 - 5, 8, 10, 11,13 - 21, 24, 26, 28, 30 - 32, 34, 36, 38 - 41, 44 - 45, 47 and 48 above, and further in view of Nebeker (US 5,566,395). The modified device of Park shows all of the claimed invention except for the filler piece being formed from elastane. The device of Nebeker discloses a sweatband with a sponge core filler made from rubber or latex (Column 3, lines 60 –63). It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the device of Park by using an elastane core filler as taught by Nebeker in order to create a adjustable, stretchable headband.

6. Claims 27 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park in Smith as applied to claims 1 - 5, 8, 10, 11,13 - 21, 24, 26, 28, 30 - 32, 34, 36, 38 - 41, 44 - 45, 47 and 48 above, and further in view of McBride (US 6,502,245). The modified device of Park shows all of the claimed invention except for the inner sweatband being made from material that is 94% cotton and 6% spandex. The device of McBride teaches a sweatband exhibiting similar characteristics with 96% cotton and 4% spandex (Column 2, lines 66 – 67). It is known in the art that fiber content may vary in commercial products up to two percent according to labeling restrictions and the specific fiber content. Moreover, 96% cotton, 4% spandex is a known fiber combination used in many apparel items. Modifying the percententage of amount of spandex fiber used is obvious and does not provide any patentable distinction over the prior art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Park and Smith by using a 94% cotton and 6% spandex fabric in order to utilize the absorbency of the cotton fabric and the stretch characteristics of spandex to provide a comfortable fit for the wearer.

7. Claims 29 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park and Smith as applied to claims 1 - 5, 8, 10, 11,13 - 21, 24, 26, 28, 30 - 32, 34, 36, 38 - 41, 44 - 45, 47 and 48 above, and further in view of Park (Us 6,122,774). The modified device of Park shows all of the claimed invention except for the binding is cut in the bias direction. The device of Park shows all of the claimed invention except for the binding is cut in a bias direction. The device of Park shows binding tape cut in the bias direction covering the seams of the headwear article (Column 3. lines 42 – 43). It

would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the device of park by using bias tape as the binding to cover the seam as taught by Park in order to allow the binding to stretch with the sweatband fabric when force is applied.

Response to Arguments

8. Applicant's arguments filed 12/22/2005 have been fully considered but they are not persuasive.

9. Applicant submits that the device of Smith does not disclose an "inner piece formed of stretchable fabric material folded about itself such that opposing longitudinal edges of the inner piece are proximate one another to form an seam" and further more "binding of elastic material secured to aside of the folded inner piece having the seam." The examiner recognizes the device of Smith has two folds as pointed out by the applicant; however, when interpreted in the broadest reasonable sense the first folds 34 and 32 create longitudinal edges 38 and 40 that are proximate to each other forming a seam. The applicant has not limited the number of folds forming the seam of the band. As shown in Figure 3, the binding (24) is attached over the folded seam of the sweatbands folded edges (38) and (40).

10. Applicant's arguments regarding claims 6, 7, 22, 23, 25, 27, 29, 33, 35, 37, 42, 43, 46, and 49 are hinged on the asserted deficiencies of Smith. Prior rejections are maintained.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richale L. Haney whose telephone number is 571-272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on 571 -272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Richale L. Haney
Patent Examiner
Art Unit 3765
March 20, 2006

RLH

JOHN J. CALVERT
SUPERVISORY PATENT EXAMINER
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